In the

Supreme Court of the United States

October Term, 1936 No. .

HIRAM STEELMAN, Trustee in Bankruptcy
of WILLIAM FOX, a Bankrupt.

Petitioner,

vs.

ALL CONTINENT CORPORATION.

Respondent.

Petition for a Temporary Restraining Order and for Temporary Injunction and Memorandum in Support Thereof

WM. ELMER BROWN, Jr.,
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IN THE

SUPREME COURT OF THE UNITED STATES

In the Matter of
WILLIAM FOX,

Bankrupt,

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, a Bankrupt,

Petitioner

—against—

ALL CONTINENT CORPORATION,

Respondent

PETITION FOR A TEMPORARY RESTRAINING ORDER AND FOR TEMPORARY INJUNCTION MEMORANDUM IN SUPPORT THEREOF

To the Honorable Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States:

Your petitioner, Hiram Steelman, as Trustee in Bankruptcy of the Estate of William Fox, a Bankrupt, prays for the issuance of a temporary restraining order and a temporary injunction, without the giving of a bond or other security by your petitioner, against the respondent All Continent Corporation, its officers,

agents, attorneys and employees, pending the final decision of this Court upon the petition for a writ of certiorari duly filed this day by your petitioner in the above entitled cause.

Your petitioner prays that respondent, All Continent Corporation, its officers, agents, attorneys and employees, be restrained and enjoined, pending final determination of the petition for a writ of *certiorari,* as aforesaid, from proceeding in any manner or taking any action against your petitioner in a certain suit now pending in the United States District Court for the Eastern District of Pennsylvania, entitled "All-Continent Corporation, Plaintiff, v. John S. Wynn, et al., Defendants," in Equity, No. 9533.

The facts with respect to said petition for a writ of *certiorari,* as well as the said suit pending in the United States District Court for the Eastern District of Pennsylvania, are set forth in said petition. In the interest of brevity your petitioner incorporates herein the allegations and contents of said petition, a copy of which is annexed hereto marked Exhibit "A".

The grounds and reasons for this application are that unless a temporary restraining order and temporary injunction are issued by this Court, irreparable injury is likely to result to your petitioner and any relief to which your petitioner may be entitled upon his said petition for a writ of *certiorari,* may be effectively nullified.

The prosecution by All Continent Corporation of any proceedings against your petitioner in the said

action pending in the United States District Court for the Eastern District of Pennsylvania (hereinafter referred to as the Pennsylvania action) was enjoined and restrained by order of the United States District Court for the District of New Jersey. That order was reversed by the United States Circuit Court of Appeals. This final decree of reversal is the matter which your petitioner now seeks to have reviewed by this Court, as set forth in his petition for writ of *certiorari*.

Your petitioner has not appeared in the said Pennsylvania action and has interposed no answer therein. Your petitioner is now in default in said action.

Thus, unless a restraining order and temporary injunction are issued, a decree *pro confesso* against your petitioner may be taken by respondent, with a final default judgment resulting therefrom. In addition to the effect of such a default judgment with respect to the securities which are the subject matter of said Pennsylvania action, a default judgment taken therein may include findings of fact at least prejudicial to your petitioner in other litigations.

As appears in the petition for a writ of *certiorari*, your petitioner has instituted proceedings against All Continent Corporation in the Chancery Court of New Jersey seeking to recover all the property of All Continent Corporation as property of the bankrupt estate. A default judgment in the Pennsylvania action might contain findings of fact which, in substance, would be of respondent's own choosing. Without going into the

effect of such findings of fact it is submitted that such action by respondent should be restrained until this Court shall have had the opportunity to pass upon the petition for a writ of *certiorari*.

If All Continent Corporation, the respondent, herein and the plaintiff in the Pennsylvania action, be not enjoined from entering such a default judgment, the grant of your petitioner's writ of *certiorari* and the reversal of the decree of the United States Circuit Court of Appeals by this Court would be of no value to your petitioner. In such case, even though this Court should find that all proceedings against your petitioner by All Continent Corporation in the said Pennsylvania action were properly restrained, and that the restraint thereof should be reinstated and continued, nevertheless All Continent Corporation, as plaintiff in that action, would have secured all the relief against your petitioner which it could have secured had said proceedings not been restrainable.

Your petitioner has heretofore applied to the United States Circuit Court of Appeals for the temporary restraining order and temporary injunction sought upon this application. Said restraining order and temporary injunction were denied by said United States Circuit Court of Appeals. While the coming down of the mandate from the Circuit Court of Appeals has not yet occurred and has been, upon your petitioner's application, automatically stayed (pursuant to Rule 30 of the United States Circuit Court of Appeals for the Third Circuit), nevertheless the restraining order

prayed for herein is essential to your petitioner. Since the order of said Circuit Court of Appeals reversing the order of the United States District Court for the District of New Jersey was filed, respondent, All Continent Corporation, has taken further proceedings in said Pennsylvania action. On December 1, 1936, respondent procured a temporary restraining order in said Pennsylvania action. On December 11, 1936, respondent procured a permanent injunction in said Pennsylvania action.

Your petitioner has in all respects proceeded diligently to bring before this Court this application, together with his petition for a writ of *certiorari*.

Your petitioner further moves and prays for such other and further relief as may be proper.

And your petitioner will ever pray.

By WM. ELMER BROWN, JR.
Counsel for Petitioner

Dated JAN 11 1937

IN THE

SUPREME COURT OF THE UNITED STATES

HIRAM STEELMAN, Trustee in Bankruptcy of William Fox, a Bankrupt,

Petitioner,

vs.

ALL CONTINENT CORPORATION,

Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

The grounds and reasons for the application contained in the annexed petition are set forth in the said petition and in the petition for writ of *certiorari* filed in this court in the above entitled cause this day.

The jurisdiction and power of a Justice of this Court or of the Court itself to grant the relief prayed for cannot be questioned. It is granted by Section 262, Judicial Code (28 U. S. C. A. § 377) which provides:

> "The Supreme Court * * * shall have power to issue all writs not specifically provided for by statute which may be necessary for the exercise

> of their respective jurisdictions and agreeable to the usages and principles of law."

and Section 264, Judicial Code (28 U. S. C. A. § 378) which provides:

> "Writs of injunction may be granted by a Justice of the Supreme Court in cases where they might be granted by the Supreme Court * * * ."

Respectfully submitted,

WM. ELMER BROWN, JR.
Counsel for Petitioner